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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS

v.

HOUSEHOLD FINANCE CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

FILED DECEMBER 28, 1970
PROBABLE JURISDICTION NOTED MARCH 1, 1971

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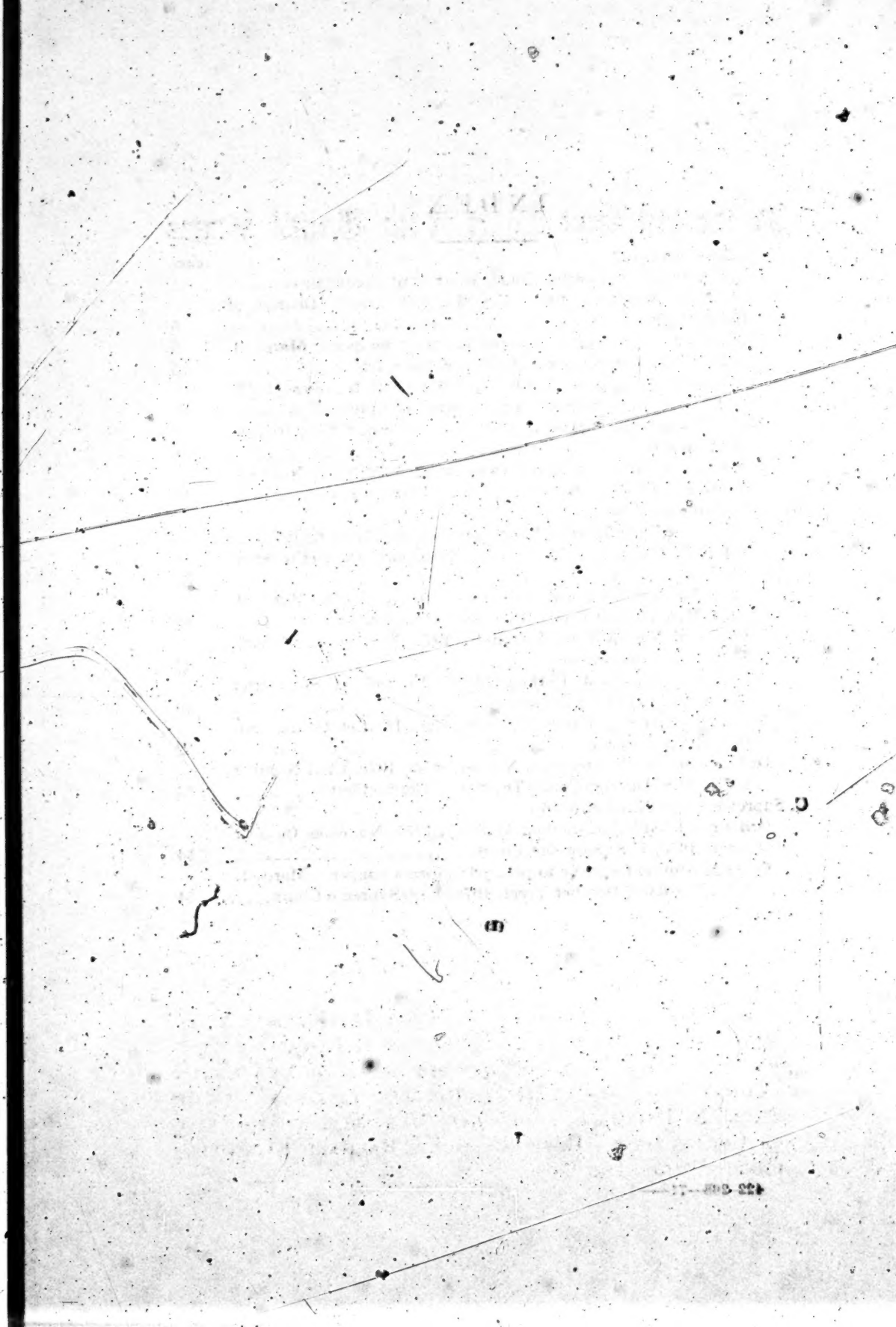

APPENDIX

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OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL., APPELLANTS

v.

HOUSEHOLD FINANCE CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

3-JUDGE COURT

Hon. ROBERT P. ANDERSON, U.S.C.J.
Hon. WILLIAM H. TIMBERS, U.S.D.J.
Hon. ROBERT C. ZAMPANO, U.S.D.J.

Jury demand date:

CIVIL DOCKET

In the United States District Court
13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC.

Attorneys for plaintiff: *Allen Sims*, 169 Church Street, New Haven, Conn.; *William H. Clendenen, Jr.*, 185 Church Street, New Haven, Conn.; *David M. Lesser*, 605 Congress Avenue, New Haven, Conn.; *Kenneth R. Kreiling*, 185 Church St., Rm. 805, New Haven, Conn. 06510.

Attorneys for defendant: *Richard G. Bell, Household Finance;* Goldman & Friedler, Tyler, Cooper, Grant, Bowerman & Keefe, 205 Church Street, New Haven, Conn.; *Gerald W. Brownstein*, Amicus Curiae o/b/o The Commercial Law League of America, 900 Chapel Street, New Haven, Conn., *Charles A. Pulaski, Jr.*, J. Friedler, HFC & Goldman, Tyler, Cooper, Grant, Bowerman & Keefe, 205 Church St., New Haven, Conn.

Basis of Action: Action claiming deprivation of rights under the U.S. Constitution; and seeking a declaratory judgment and an injunction against the enforcing and executing by defendants of Sections 52,279, 52,280, 52–329, and 52–304 of the Conn. General Statutes. Also seeks a 3-Judge Court.

Date	Proceedings
Mar. 4, 1970	Motion for Permission to Proceed in Forma Pauperis, filed. Order entered thereon granting same. Zampano, J.
Mar. 4, 1970	Complaint filed.
Mar. 4, 1970	Request for a three-judge court pursuant to Title 28, U.S.C. Sections 2281 and 2284, filed.
Mar. 4, 1970	Brief in Support of Plaintiff's Application for a Three-Judge Court, filed.
Mar. 4, 1970	Summons issued and together with copies of same and of complaint, Motion Order and Brief, handed to the Marshal for service.
Mar. 11, 1970	Marshal's Return Showing Service, filed. Summons & Complaint. Non-est Return re David W. Goldman.
Mar. 11, 1970	Designation of Judges, entered. The following judges are designated to hear and determine this cause: Hon. Robert P. Anderson, U.S.C.J.; Hon. William H. Timbers, U.S.D.J.; Hon. Robert C. Zampano, U.S.D.J. Lumbard, Chief Judge, U.S. Court of Appeals. M–3–11–70. Copies handed to plaintiffs' attorneys; Copies mailed to 3 Judges.
Mar. 13, 1970	Copies of file mailed to 3 Judges.
Apr. 3, 1970	Summons issued for service upon David W. Goldman, at the Request of Attorney Sims, and together with copies of same and of Complaint, Motion, Order and Brief, handed to the Marshal for Service.
Apr. 14, 1970	Marshal's Return Showing Service, field. Summons and Complaint-David W. Goldman.
Apr. 28, 1970	Appearance of Richard G. Bell, Esquire, entered for Defendants, Household Finance Corporation, et al. Copies sent to 3 Judges.

Date	Proceedings
May 5, 1970	Stipulation filed that the time within which Defendants Household Finance Corp. and David Goldman, may answer of otherwise move with respect to the Complaint be extended to and including May 29, 1970. Ordered Accordingly. Earl, C. Copies handed Atty Bell; Copies mailed to Plaintiff's Attorneys and to 3 Judges. M–5–6–70.
May 14, 1970	Appearance of Kenneth B. Kreiling, Esquire, entered for the Planitiff. Copies sent to 3 Judges.
May 13, 1970	The parties appeared in Court on May 13, 1970, by request of the three-judge court. Case assigned for pre-trial before Judge Zampano only on June 1, 1970 at 2:00 P.M. in New Haven. The Clerk is directed to enter a default against the defendant Jack Friedler (no appearance entered). Anderson, C. J., Timbers and Zampano, DD.J. m–5/14/70.
May 18, 1970	Appearance of Gerald W. Brownstein entered for defendant, Amigus Curiae, on behalf of The Commercial Law League of America. Copies to 3 Judges.
May 13, 1970	Default for failure to plead or otherwise defend entered against defendant Jack Friedler. Earl, C. M–5/25/70 Copies mailed to all counsel and to defendant Friedler. Copies to 3 Judges.
May 28, 1970	Appearance of Attorney Charles A. Pulaski, Jr., entered for defendants, Household Finance Corporation, and David W. Goldman.
May 28, 1970	Motion to Strike and Notice of Motion filed by Defendants, Household Finance Corporation and David W. Goldman.
June 1, 1970	After chambers hearing, stipulation was entered on the record, in which it was agreed in part by the attorneys present that they would frame the same issues for this case as were framed in the Toro case (Civil No. 13,738). On or before July 3, 1970 the defendants will file their motion to dismiss with briefs. On or before July 17, 1970 plaintiffs will respond. (See minutes for further details) Zampano, J. M–6/2/70 Copies of minutes mailed to 3 Judges.
June 9, 1970	Court Reporter's Transcript of Proceedings of June 1, 1970, filed. Sanders, Gale & Russell, R.
June 16, 1970	Endorsement on Defendants' (Household Finance Corp.) and (David W. Goldman) Motion to strike as follows: 6/15/70 Motion Off. Zampano, J. M–6/17/70. Copies mailed to counsel.
June 30, 1970	Motion to Set Aside Default and Notice of Motion, filed by Defendant, Jack Friedler. Copies sent to 3 Judges.
June 30, 1970	Appearance of Attorney's Richard G. Bell and Charles A. Pulaski, Jr., entered for Defendant, Jack Friedler. Copies sent to 3 Judges.

Date	Proceedings
July 2, 1970	Stipulation filed, that the time within which Defendants Household Finance Corporation and David Goldman may file their motion to dismiss and brief in support thereof be extended from July 3, 1970 to August 3, 1970. SO ORDERED. Zampano, J. M-7/6/70. Copies mailed to Counsel.
July 10, 1970	Ruling on Motion to Set Aside Default, filed and entered. The entry of Default, dated May 13, 1970, against Defendant Jack Friedler is hereby set aside and it is further ordered that on or before July 18, 1970, the said defendant shall file a memorandum of law on all issues currently pending in this case before the District Court of three Judges. Zampano, J. M-7/10/70, Copies mailed to Counsel. and to three Judges.
July 16, 1970	Compliance with Court Order, filed by Defendant Jack Friedler that he will join in and be bound by the Memorandum of Law to be submitted by Defendants Household Finance Corp., and David W. Goldman on or before August 3, 1970.
Aug. 3, 1970	Motion to Dismiss, filed by Defendants, Household Finance Corporation, David W. Goldman and Jack Friedler. Copies to 3 Judges.
Aug. 3, 1970	Memorandum of Law of Defendants Household Finance Corporation, David W. Goldman, and Jack Friedler in Support of Their Motion to Dismiss, filed. Copies to 3 Judges
Aug. 12, 1970	Stipulation filed, that the time within which Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss may be filed, is extended from August 17, 1970 to September 17, 1970. Ordered Accordingly, Earl, C. M-8/12/70. Copies mailed to Counsel.
Sept. 15, 1970	Stipulation filed, that the time within which Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss may be filed, is extended from September 17, 1970 to October 1, 1970. Ordered Accordingly, Earl, C. M-9/15/70. Copies mailed to counsel of record.
Sept. 18, 1970	Per Judge Zampano's instructions to Miss Consiglio, the Motion to Dismiss is not to be placed on any Calendar.
Sept. 30, 1970	Plaintiff's Memorandum in Opposition to the Defendants' Motion to Dismiss, filed. Copies to the 3 Judges.
Oct. 22, 1970	Opinion, entered. Ordered that judgment be entered for defendants dismissing the complaint, but without costs. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.

Date	Proceedings
Oct. 22, 1970	Judg nent entered. Ordered that judgment be entered in favor of defendents, denying all relief sought by plaintiffs and dismissing the complaint; and that no costs shall be taxed against any party to this action. Anderson, U.S.C.J.; Timbers, U.S.D.J.; and Zampano, U.S.D.J. M-10/23/70 Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.
Nov. 19, 1970	Notice of Appeal to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to all counsel and to 3 Judges.

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES' CREDIT UNION, INC., DEFENDANTS

COMPLAINT

(Filed March 4, 1970)

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. Section 1983 to redress the deprivation of rights, privileges and immunities secured to the plaintiffs by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C., Section 1343.

3. This is a proper case for a determination by a three-judge district court pursuant to Title 28, U.S.C. Sections 2281 and 2284, in that it seeks an injunction to restrain the defendants, some of whom are state officials performing state functions, from applying, enforcing and executing Sections 52-279,

52–280, 52–329, 52–304 of the Connecticut General Statutes insofar as these statutes authorize and allow pre-judgment garnishment and attachment without prior notice, judicial hearing and the opportunity to be heard in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

4. This action seeks an injunction and declaratory judgment (Title 28 U.S.C. §§ 2201 and 2202) restraining the enforcement of and declaring unconstitutional Sections 52–279, 52–280, 52–304 of the Connecticut General Statutes on their face and as applied and used by the defendants on the grounds that said statutes and actions taken pursuant thereto deprive the Plaintiffs of the equal protection of the laws and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

5. The named Plaintiff seeks, pursuant to Rule 23, Federal Rules of Civil Procedure, to represent those persons similarly situated, who constitute a class encompassing those residents of the State of Connecticut who have been and will be in the future, subjected to and are threatened with pre-judgment attachment and garnishment as authorized by Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes. The members of the class on behalf of whom this action is brought are similarly affected by the statutes complained of herein and are so numerous as to make it impracticable to bring each one of them individually before this Court. There are common questions of law and fact, and the claims of the named Plaintiff are typical of the claims of the class she represents, and the named Plaintiff will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class.

6. The named Defendant, Jack Friedler, pursuant to Rule 23, Federal Rules of Civil Procedure, represents the sheriffs, deputy sheriffs and constables in the State of Connecticut who are authorized to serve writs of attachment and garnishment. The members of this class are so numerous as to make it impracticable to bring each one of them individually before this Court, but they have common interests in the questions of law and fact to be litigated herein. The defenses of the named Defendant, Jack Friedler, are typical of the class he represents, and litigation by him will fairly and adequately protect the interests of the members of the class. The statutes complained

of herein are generally and equally applicable to every member of the class, making relief as against all appropriate.

7. The Plaintiff, Dorothy Lynch, is a citizen and resident of the United States and of the State of Connecticut.

8. The named Plaintiff works for St. Raphael's Hospital and earns $69.00 per week. She has no other source of income. These earnings must support the plaintiff and her youngest son fully and partially support her older son.

9. In February of 1968, the named Plaintiff opened a savings account in the Credit Union of St. Raphael's Hospital. Pursuant to the deposit agreement, $10.00 per week was deducted regularly from her salary and deposited in this account. On many occasions, between February, 1968 and the date of the attachment she had used the wages deposited in this account to meet necessary family expenses.

10. Defendant, Household Finance Corporation, acting through its manager and authorized agent, Robert Layton, is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business in the Town of Hamden, County of New Haven, State of Connecticut, and is the plaintiff in a civil action against Dorothy Lynch, the named Plaintiff herein, which is pending in the Sixth Circuit Court of the State of Connecticut, and which was commenced by a writ of attachment, a copy of which is attached hereto as Exhibit A, and is hereby incorporated by reference.

11. Defendant, David W. Goldman, is an attorney licensed to practice law in the State of Connecticut, and represents Household Finance Corporation in the aforementioned civil action and who, as attorney and agent for Household Finance Corporation and acting in his capacity as a Commissioner of the Superior Court of the State of Connecticut, signed and issued a writ of attachment, pursuant to Section 52–329 of the Connecticut General Statutes, against the named Plaintiff Dorothy Lynch.

12. Defendant, Jack Friedler, is a deputy sheriff for the County of New Haven, State of Connecticut. Defendant Friedler, pursuant to the command contained in the writ of attachment, attached the named Plaintiff's savings account by serving the above-stated writ of attachment on the Hospital of St. Raphael Employees' Credit Union, Inc., the holder of the named Plaintiff's savings account.

13. Defendant Hospital of St. Raphael Employees' Credit Union, Inc., acting through its agent, Betty Shanley, President, is a corporation organized and existing under the laws of the State of Connecticut and having its place of business in New Haven, Connecticut. Said Defendant holds funds of the named Plaintiff which the latter deposited therein. Said Defendant accepted the aforementioned writ of attachment which completed the attachment of the named Plaintiff's funds.

14. On June 20, 1969, the Defendant, David W. Goldman, acting under color of the authority conferred upon him by the laws of the State of Connecticut as a Commissioner of the Superior Court of the State of Connecticut, and pursuant to Sections 52–329 and 52–279 of the Connecticut General Statutes issued a writ of attachment, commanding the Sheriff of the County of New Haven to attach to the value of $800.00. The Defendant, David W. Goldman, was acting and continues to act as an attorney representing the interests of Household Finance Corporation in the aforementioned civil action pursuant to which this writ of attachment was issued. (See Exhibit A)

15. On June 23, 1969, the Defendant, Jack Friedler, attached an account of the named Plaintiff at the Hospital of St. Raphael Employees' Credit Union, Inc. containing $494.83 and served on the named Plaintiff a copy of the aforementioned writ, summons and complaint.

16. Since June 23, 1969, the named Plaintiff, Dorothy Lynch, has been deprived of the use of her money in this account which is extremely important to the continued well-being and livelihood of herself and her children.

17. As a result of the attachment made on the named Plaintiff's accumulated earnings, she has suffered great hardship and mental and physical privation, being unable to draw upon this source of her wages to meet necessary expenses of clothing, rent, food, and medical expenses.

18. The named Plaintiff was given no notice prior to the attachment, nor was she given any opportunity to be heard either prior to or within a reasonable time after the attachment.

19. Pre-judgment attachment and garnishment are authorized by Sections 52–279, 52–280, 52–304 and 52–329 of the Connecticut General Statutes. These statutes permit attachment and garnishment at the commencement of a suit containing a

demand for money upon the order of an attorney representing a self-proclaimed creditor or other plaintiff, against the estate or goods of any person from whom the self-proclaimed creditor or other plaintiff claims money.

20. The statutes permit attachments or garnishments to be made whether a defendant in an action pursuant to which an attachment is made is a resident or non-resident of the state, without regard to the ease with which personal jurisdiction over a defendant could be obtained and without regard to the existence or non-existence of any necessity to protect a plaintiff by obtaining security for any judgment which may be rendered against a defendant.

21. The procedure authorized by the aforementioned statutes provides for no prior notice to the persons whose goods, estate, or debts are to be attached or garnished. There is no provision for a prior determination by an independent third party that a plaintiff's claim has any merit whatsoever or that the remedies of attachment and garnishment are in any way necessary to protect the interests of the plaintiff. A plaintiff in an action pursuant to which an attachment or garnishment is made is not required to verify the allegations of the complaint or to give oath or affirmation that the allegations are true.

22. The procedure authorized by the aforementioned statutes contains no provision permitting a defendant to have an attachment or garnishment released promptly on the ground that the plaintiff's claim is spurious or without merit, nor is there any statutory or common law procedure by which a defendant is insured the right to a prompt and summary hearing on the merits.

23. The aforementioned statutes on their face and as applied by the Defendants herein are unconstitutional in that the procedure established by their authority did cause and may in the future cause the named Plaintiff herein to be deprived of her liberty and property without due process of law, and to be denied the equal protection of the laws in that the cited Connecticut statutes invidiously discriminate against debtors and the poor all in violation of the Fourteenth Amendment to the United States Constitution.

24. The Plaintiffs have no adequate remedy at law, and the Defendants will continue to cause the Plaintiffs irreparable injury unless enjoined by this Court.

WHEREFORE, the Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action and convene a three-judge court pursuant to Title 28 U.S.C. Sections 2281 and 2284.

2. Enter a final judgment pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Connecticut Statutes cited herein deprive the Plaintiffs of rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and that the statutes are unconstitutional on their face and as applied by he Defendants herein.

3. Enter a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–304, and 52–329 of the Connecticut General Statutes.

4. Enter a permanent injunction ordering the Defendants, their successors, agents, and employees to release the attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs, without cost, any personal property which they have attached.

5. Order such other and further relief as is deemed just and proper.

THE PLAINTIFFS.
By Their Attorneys,
ALLEN SIMS.
WILLIAM H. CLENDENEN, Jr.
DAVID M. LESSER.

VERIFICATION

NEW HAVEN, *February 26, 1970.*

STATE OF CONNECTICUT,
County of New Haven ss:

I, Dorothy Lynch, being first duly sworn upon oath according to law, hereby depose and say that I have read the foregoing Complaint, know the contents thereof, and that the statements contained herein are true and correct, to the best of my knowledge and belief.

Dorothy Lynch
DOROTHY LYNCH.

[Jurat Deleted]

EXHIBIT A

To the Sheriff of the County of New Haven, his Deputy or either Constable of the Town of New Haven, within said County,—Greeting.

By Authority of the State of Connecticut, You are hereby commanded to attach to the value of Eight Hundred and 00/100 dollars, the goods or estate of Dorothy Lynch, a resident of the City, Town, and County of New Haven, State of Connecticut (180 Canal Street) and her summon to appear before the 6th Circuit Court to be held at New Haven, in and for the 6th Circuit County of New Haven, on the 3d Tuesday of July A.D. 1969, then and there to answer unto Household Finance Corporation, a corporation organized and existing under the laws of the State of Delaware and having an office and place of business in the City, Town of Hamden, and County of New Haven, Conn., in a civil action wherein the Plaintiff complains and says;

FIRST COUNT

1. On and before June 20, 1969 the plaintiff lent $480.00 to the defendant

2. And paid, laid out and expended said sum for the defendant

3. And sold and delivered goods, wares and merchandise of the price and value of said sum to the defendant.

4. And bargained and sold goods, wares and merchandise of the price and value of said sum to the defendant

5. And performed work and rendered professional services of the price and value of said sum for the defendant

6. And furnished materials of the price and value of said sum to the defendant

7. And furnished board and lodging, washing, fuel and other articles of the price and value of said sum to the defendant

8. And used certain vehicles and equipment of the Plaintiff, by Plaintiff's permission, which use was reasonably worth said sum;

9. And performed professional services of the price and value of said sum for the Defendant;

10. And on said day the defendant had and received said sum to and for the use of the plaintiff.

11. And used and occupied certain lands, tenements and apartments of the plaintiff by his *their its* permission, which use and occupation were reasonably worth said sum;

12. And said sum was found to be due to the plaintiff from the defendant on an account then and there stated between them;

13. Yet though said sums are justly due to the plaintiff from the defendant the defendant has *have* never paid the same;

Written demand was made upon the defendant(s) for payment of the foregoing claim not more than thirty days nor less than three days prior to the date of this writ.

The plaintiff seeks satisfaction of the foregoing claim out of any debt accruing by reason of personal services rendered by the said defendant to

The plaintiff claim(s):

1. $525.00 damages.

2. An order on the defendant for reasonable weekly payments out of sums earned or to be earned by the defendant for services rendered or to be rendered by him in accordance with the statute made and provided.

And you are hereby commanded to leave a true and attested copy of this writ, and of the accompanying complaint at least twelve days before the session of the Court to which it is made returnable, with St. Raphael's Hospital Credit Union, a legal corporation, organized and existing under the laws of this State (or) of the United States, respectively; and located and having an office and principal place of business in said Town City of New Haven, as it is the Agent, Trustee, and Debtor of said defendant and has concealed in its hands the goods, effects and estate of said defendant and is indebted to her.

And you are further commanded to summon said garnishee to appear before said Court at the time and place first mentioned, then and there to disclose on oath whether he it has they have concealed in his its their hands the goods, effects or estate of said defendant or is are indebted to him them.

Nathan Frank of New Haven is recognized in $35.00 to prosecute, etc.

I, the subscribing authority, hereby certify that I have personal knowledge as to the financial responsibility of the plaintiff and deem it sufficient to pay the costs in this action.

Of this writ, with your doings thereon, make due service and return. Dated at New Haven, Conn. this 20th day of June, A.D. 1969.

DAVID W. GOLDMAN,
Commissioner of the Superior Court.

Please enter the appearance of GOLDMAN, MELNICK & WILLIAMS for the Plaintiff in the above entitled action.

NEW HAVEN, *June 23, 1969.*

STATE OF CONNECTICUT,
New Haven County, ss.

Then and there by virtue hereof, of the original writ, I attached as the property of the within named Defendant .....
all goods, effects, money and debts due to or belonging to the within named Defendant and in the hands or possession of the within *noted* garnishee St. Raphael's Hospital Credit Union, by leaving with ———, ———, a true and attested copy hereof, at least twelve days before the session of the Court to which ..... being herein named and described as the Agent, Trustee, Debtor, of said Defendant, and said garnishee having ..... inquired of by me, disclosed that *if* he was *they* were indebted to said Defendant at the date hereof in the sum of $——— and I made diligent search throughout my precincts for other goods and estate of said Defendant whereof to attach, but could find none.

And afterwards on the ——— day of ——— 19— I left with, at the usual place of abode of the within named Defendant, a true and attested copy of the within writ, summons and complaint with my said doings thereon endorsed.

The within and foregoing is a true copy of the original writ, summons and complaint with my doings thereon endorsed.

FEES

.... Miles Travel .....$....
....Copy .....
....Service .....
....Endorsement .....
Securing Property.....

Attest:
———, *Deputy Sheriff.*

No.....

Comm ..... Esq.

Judge.....

.....

vs.

.....

.....*Att'y for Pl'f.*

.....*Att'y for Def't.*

Returnable to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.

.....

.....

.....

.....

Judgment, dated..... 19

Damages $
Costs.....
Execution .....
Total.....

Execution Issued.....19
Execution Renewed.....
.....

Court Fees, $... Paid...19
By .....
.....

PLAINTIFF'S DEFENDANT'S BILL OF COSTS

Writ.....
Officer's Fees.....
Prevailing Party's Indemnity.
Court Fee.....

Witnesses:

.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days

Taxed by

.....

Service of the within writ, summons & complaint, is hereby accepted for the defendant.

The defendant voluntarily agrees to pay the costs of this action whether or not the writ is returned to court; And further agrees that, at the option of the plaintiff, the writ may be returned to court any time after return date.

.....
Defendant

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS DEPUTY, SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES' CREDIT UNION, INC., DEFENDANTS

MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS

(Filed March 4, 1970)

Comes now the plaintiff, Dorothy Lynch, by counsel, Allen Sims, and moves this court, pursuant to Title 28 U.S.C.A. 1915, for permission to proceed in forma pauperis in filing the attached complaint for a declaratory judgment and injunctive relief under the Civil Rights Act, Title 42 U.S.C., Section 1983, and Title 28 U.S.C., Section 1343. An Affidavit in support of this motion is attached hereto.

DOROTHY LYNCH,
The plaintiff.
By ALLEN SIMS.
Her Attorney.

ORDER

The foregoing motion having been submitted to the Court and good cause appearing therefor, it is hereby

ORDERED: that plaintiff be permitted to proceed in forma pauperis in this Court.

Dated this 3d day of March, 1970.

ROBERT C. ZAMPANO,
Judge.

AFFIDAVIT

NEW HAVEN, *February 26, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss:

I, Dorothy Lynch, being first duly sworn according to law, state in support of my attached motion for permission to proceed in *forma pauperis:*

1. I am a plaintiff in this action.

2. My only source of income is my earnings of $69.00 (Sixty-Nine) dollars per week, and with these earnings I support myself and my youngest son fully, and give partial support to my older son.

3. I am deeply in debt, and have barely escaped eviction and extreme hunger as a result of the attachment of my small account.

4. I am unable, because of my poverty, to pay the costs of this action.

5. I am unable to give security.

6. I believe in good faith that I am entitled to the relief I am seeking.

7. The nature of the action is as follows:

The Affiant seeks a declaratory judgment that Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes on their face and as applied in this case contravene her rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. The Affiant furthermore seeks a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes, and a permanent injunction ordering the Defendants, their successors, agents and employers to release any prejudgment attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs without cost any personal property which they have attached.

Dorothy Lynch
DOROTHY LYNCH.

[Jurat Deleted]

In the United States District Court for the District of Connecticut

Civil No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION, ET AL., DEFENDANTS

Civil No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

DESIGNATION OF JUDGES (Filed March 11, 1970)

Having been notified by the Honorable Robert C. Zampano, United States District Judge for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to Title 28 United States Code Section 2281, pursuant to Title 28 United States Code Section 2284, I hereby designate the following judges, in addition to the Honorable Robert C. Zampano, to hear and determine said cause as provided by law: Honorable Robert P. Anderson, United States Circuit Judge and Honorable William H. Timbers, United States District Judge for the District of Connecticut.

It is hereby ordered that this order be filed in the above entitled cause in the United States District Court for the District of Connecticut.

Dated: New York, N.Y. March 9, 1970.

J. EDWARD LUMBARD,
Chief Judge, United States Court of Appeals for the Second Circuit.

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION, ET AL., DEFENDANTS

MOTIONS TO DISMISS (Filed August 3, 1970)

The below named defendants hereby move to dismiss the above entitled action pursuant to Rule 12(b), Federal Rules of Civil Procedure, for each of the following reasons:

(a) The complaint alleges at most a deprivation of property only, of value less than $10,000; and, therefore, the Court lacks jurisdiction over the subject matter.

(b) The complaint fails to state a claim for which relief can be granted in that it fails to allege conduct by any person "under color of state law" within the meaning of Section 1983, Title 42, United States Code.

(c) The complaint fails to state a claim for which relief can be granted in that the relief sought is precluded by the provisions of Section 2283, Title 28, United States Code.

(d) The complaint fails to establish the qualifications of either the plaintiff or the defendant Jack Friedler as the representative of a class in accordance with the provisions of Rule 23, Federal Rules of Civil Procedure.

The Defendants,
Household Finance Corporation.
DAVID W. GOLDMAN.
JACK FRIEDLER.
By RICHARD G. BELL.

INTENDED ORDER DELETED

CERTIFICATE OF SERVICE

[Omitted in Printing]

In the United States District Court for the District of Connecticut

Civil No. 13,737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS, AND CONSTABLES OF THE STATE OF CONNECTICUT; AND HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC., DEFENDANTS

Civil No. 13,738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; AND THE HAMDEN NATIONAL BANK, DEFENDANTS

JUDGEMENT

(October 22, 1970)

The above-entitled causes having been heard by a three-judge District Court and the said causes having been fully submitted; and

The Court having filed its opinion, constituting its findings of fact and conclusions of law herewith; it is ORDERED, ADJUDGED and DECREED:

(1) That judgment be, and it hereby is, entered in favor of defendants in both actions, denying all relief sought by plaintiffs and dismissing the complaints.

(2) That no costs shall be taxed against any party to these actions.

Dated at New Haven, Connecticut, this 22nd day of October, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.
WILLIAM H. TIMBERS
United States District Judge.
ROBERT C. ZAMPANO
United States District Judge.

In the United States District Court for the District of Connecticut

Civil No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS, AND CONSTABLES OF THE STATE OF CONNECTICUT; AND HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC., DEFENDANTS

Civil No. 13,738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; AND THE HAMDEN NATIONAL BANK, DEFENDANTS

OPINION

(October 22, 1970)

Before ANDERSON, *Circuit Judge*, and TIMBERS and ZAMPANO, *District Judges*.

Class actions by owners of savings and checking accounts seeking declaratory and injunctive relief on the ground their constitutional rights are impaired by the Connecticut prejudgment attachment and garnishment statutes. Complaints dismissed for lack of Civil Rights Act jurisdiction, 42 U.S.C. § 1983 (1964), 28 U.S.C. § 1343(3) (1964) and because of the prohibition against enjoining state court proceedings, 28 U.S.C. § 2283 (1964).

Allen Sims, William H. Clendenen, Jr., David M. Lesser and Kenneth R. Kreiling, New Haven, Conn., *for plaintiffs in both actions.*

Richard G. Bell and Charles A. Pulaski, Jr., of Tyler, Cooper, Grant, Bowerman & Keefe, New Haven, Conn., *for defendants Household Finance Corp., Goldman and Friedler in No. 13,737.*

Raymond J. Cannon, Daniel R. Schaefer and C. Michael Budlong, Asst. Attys. Gen., and Robert K. Killian, Atty. Gen., State of Connecticut, Hartford, Conn., *for defendant Barrett in No. 13,738.*

Robert S. Evans of Evans & Evans, New Haven, Conn., *for defendant The Hamden National Bank in No. 13,738.*

Eugene A. Camposano, East Haven, Conn., *defendant pro se in No. 13,738.*

Jerome A. Lacobelle, New Haven, Conn., *defendant pro se in No. 13,738.*

Gerald W. Brownstein, New Haven, Conn., *for The Commercial Law League of America, amicus curiae in both actions.*

TIMBERS, District Judge:

QUESTIONS PRESENTED

In these class actions brought by owners of a savings account and of a checking account, respectively, seeking declaratory and injunctive relief on the ground their constitutional rights are impaired by the Connecticut prejudgment attachment and garnishment statutes, threshold questions are presented as to

whether this Court has subject matter jurisdiction pursuant to the Civil Rights Act, 42 U.S.C. § 1983 (1964), and its jurisdictional implementation, 28 U.S.C. § 1343(3) (1964); and whether the actions are barred by the prohibition against enjoining state court proceedings, 28 U.S.C. § 2283 (1964).

For the reasons stated below, we hold in both actions that the Court lacks subject matter jurisdiction and the actions are barred by the anti-injunction statute. Judgments therefore must be entered for defendants dismissing the complaints in both actions.

Facts

The facts alleged in the respective complaints, which are taken as true on defendants' motions to dismiss, may be briefly summarized.

In the *Lynch* action (No. 13,737), on June 20, 1969 defendant Goldman, an attorney representing Household Finance Corporation in a civil action against Dorothy Lynch in the Connecticut Circuit Court for the Sixth Circuit, signed and issued, in his capacity as a Commissioner of the Superior Court, a writ of attachment commanding the attachment of Mrs. Lynch's assets to the value of $800. On June 23, 1969 defendant Friedler, a deputy sheriff for New Haven County, served the writ of attachment on the Hospital of St. Raphael Employees Credit Union, Inc., where Mrs. Lynch had a balance of $494.83 in her savings account. This completed the attachment of Mrs. Lynch's savings account.

In the *Toro* action (No. 13,738), on January 27, 1970 defendant Lacobelle, an attorney representing Eugene A. Camposano in a civil action against Norma Toro in the Connecticut Circuit Court for the Sixth Circuit, signed and issued, in his capacty as a Commissioner of the Superior Court, a writ of attachment commanding the attachment of Mrs. Toro's assets to the value of $700. On January 30, 1970 defendant Barrett, a deputy sheriff for New Haven County, served the writ of attachment on The Hamden National Bank, where Mrs. Toro had a balance of $103.99 in her checking account. This completed the attachment of Mrs. Toro's checking account.[1]

[1] Defendant Lacobelle's release of the attachment of Mrs. Toro's checking account on March 31, 1970 raises at least the suggestion of mootness of the *Toro* action, 6A Moore's Federal Practice ¶ 57.13, at 3072 (2nd ed. 1966)—an issue which we need not decide in view of our dismissal of the action on other grounds.

In both actions plaintiffs allege that they had no prior notice of the attachments, that they were given no opportunity to be heard prior to the attachments and that the deprivation of plaintiffs' use of the money in the accounts has caused them hardship.

Plaintiffs, purporting to represent those persons similarly situated who are said to constitute a class encompassing all Connecticut residents who have been or will be subjected to pre-judgment attachment or garnishment, claim that the Connecticut pre-judgment attachment and garnishment statutes[2] on their face and as applied to plaintiffs impair their rights under the due process and equal protection clauses of the Fourteenth Amendment.[3] They seek declaratory and injunctive relief, invoking the jurisdiction of this Court pursuant to the Civil Rights Act, 42 U.S.C. § 1983 (1964), and 28 U.S.C. § 1343(3) (1964).

Since the actions seek injunctive relief with respect to State statutes upon the ground of the unconstitutionality of such stat-

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[2] Four specific statutory provisions challenged by plaintiffs—Conn. Gen. Stat. §§ 52-279 (amended by P.A. 505 (1969)), 52-280 (1958), 52-329 (amended by P.A. 280 (1961)) and 52-304 (amended by P.A. 517, § 44 (1961))—are part of Connecticut's comprehensive statutory attachment plan set forth in Chapters 904 and 905 of the General Statutes. Conn. Gen. Stat. §§ 52-279 through 52-346 (1958).

To the extent here relevant, the pre-judgment attachment procedure is as follows. Attachment of a defendant's real and personal property (with certain exceptions not here applicable) is authorized in a civil action where money damages is demanded in the complaint. Attachment is initiated by plaintiff's attorney, acting as a Commissioner of the Superior Court, who signs and issues the writ of attachment, together with the accompanying summons and complaint. The three are usually incorporated in one document, known as a "writ, summons and complaint." No court order is required for the issuance of such writ of attachment, except in the case of garnishment or foreign attachment of a checking account in excess of $5,000.

Attachment is effected by attaching defendant's property; this is accomplished normally by service of the writ of attachment, together with the summons and complaint, by a sheriff, deputy sheriff or constable upon the person having possession of defendant's property or upon the record of defendant's ownership or upon the person indebted to defendant. The officer making the attachment is required to make personal or abode service upon defendant of a copy of the writ of attachment and accompanying papers.

Once property is attached, the attachment lien may be dissolved upon substitution of a bond with surety.

[3] Plaintiffs' due process claim is based upon *Sniadach* v. *Family Finance Corporation*, 395 U.S. 337 (1969). Their equal protection claim, for which they cite no direct authority, draws by analogy upon such decisions as *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920), and *Korematsu* v. *United States*, 323 U.S. 214 (1944).

utes, a special statutory district court of three judges was convened to hear and determine the actions pursuant to 28 U.S.C. §§ 2281 and 2284 (1964).

We do not reach the merits of plaintiffs' constitutional claims. Rather, we grant defendants' motions to dismiss both actions on the grounds that the Court lacks subject matter jurisdiction and the action are barred by the anti-injunction statute.

OPINION

I

The sole jurisdictional basis for the instant actions is Section 1 of the Civil Rights Act of 1871, now 42 U.S.C. § 1983 (1964), and it jurisdictional implementation, 28 U.S.C. § 1343(3) (1964). Sitting as a district court, we are bound by decisions of the Court of Appeals for this Circuit. *Lewis* v. *Rockefeller*, ——F.2d—— (2 Cir. 1970), slip op. 4197, at 4202 (September, 1 1970). We hold that the decision of the Court of Appeals for this Circuit in *Eisen* v. *Eastman*, 421 F.2d 560 (2 Cir. 1969), is dispositive of the threshold jurisdictional issue presented in both actions before us, namely, whether the rights here asserted, not being one of personal liberty but dependent for their existence upon the infringement of property rights, are outside the protection of 28 U.S.C. § 1343(3) (1964). 421 F.2d at 564 and 566. We hold they are.

The court in *Eisen* had before it a New York landlord's claim that the New York City Rent and Rehabilitation Law violated his constitutional right not to be deprived of property without due process of law by reducing rents to the amounts to which Eisen was restricted under the law there involved. The court held that "Since the complaint . . . alleged only the loss of money, the district court's conclusion that jurisdiction under the Civil Rights Act was not established . . . was thus correct." *Eisen* v. *Eastman*, *supra*, at 566.

Interference with a Connecticut resident's right to the uninterrupted use of her bank account, like the interdiction of a New Yorker's right to rely upon an undiminished amount of rental income from his property, has to do almost entirely with the loss of money; it involves, at most, only an incidental deprivation of personal rights in the sense of "personal liberty, not

dependent for its existence upon the infringement of property rights." *Hague* v. *CIO*, 307 U.S. 496, 531 (1939); *Eisen* v. *Eastman*, *supra*, at 564.

Access to funds held in a savings account or a checking account—the infringed property rights which Mrs. Lynch and Mrs. Toro claim unite the interests of their classes—is so close to the simple ownership of the money involved as to be virtually indistinguishable. Unless such a right to own or use one's money is closely linked by custom to an expenditure to secure or protect a right which is in some sense "personal" and incapable of monetary valuation, as might be the case with welfare payments and wages, it is outside the protection of § 1343 (3). Otherwise, any plaintiff could claim that money taken under color of state law is marginal to his capacity to maintain the barest minimum in food, shelter, health care or personal credit rating, thereby negating *Eisen*.

Escalera v. *New York City Housing Authority*, 425 F.2d 853, 864 (2 Cir.), *cert. denied*, —— U.S. —— (1970), may not be read to suggest that *Eisen* is to be ignored in this fashion or by reasoning that any deprivation of procedural due process is automatically "personal", since the underlying right in question there was the continued occupancy of scarce public housing.

The instant cases illustrate the confusion created by the argument that the use to which a specific plaintiff might put $494.83 or $103.99 which has been set aside in a savings account or a checking account makes any of the incidents of ownership of such accounts fundamental matters of "personal liberty." To be consistent, a suitable class could be defined only in terms of plaintiffs with like subjective intentions or identical degrees of emergency need for the precise amount of money left in their savings or checking accounts at the moment they were or might be garnished. The class would be not just all poor people with savings or checking accounts, but only those likely to feel the pinch of garnishment in the same manner through a loss of marginal sums necessary to safeguard incalculable personal interests. No such class could be defined as a practical matter. And the possible mootness of Mrs. Toro's own garnishment complaint would be enough to require dismissal even if there were jurisdiction.[4]

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[4] Note 1 *supra*.

II

In view of our decision that the instant actions must be dismissed for lack of Civil Rights Act jurisdiction, *supra* pp. 6–9, it is not necessary for us to reach other grounds urged for dismissal. Since the anti-injunction statute, 28 U.S.C. § 2283 (1964), pressed upon us by defendants, appears to be so uniquely applicable here, however, we rest our decision alternatively upon that ground.

Plaintiffs are asking this Court for injunctions to stay state court proceedings for which no express authorization exists. Service of garnishment papers by the deputy sheriffs not only supplied sufficient color of law to satisfy § 1983, according to plaintiffs, but such service also began state court proceedings. Cf. *Greater Continental Corp.* v. *Schechter*, 304 F. Supp. 325, 329–30 (S.D.N.Y. 1969), *appeal dismissed*, 422 F. 2d 1100 (2 Cir. 1970).

Although garnishment may be separated from the underlying in personam action, nevertheless it cannot be enjoined if the result would amount to "substantially interfering with the prosecution of a pending state proceeding." *Studebaker Corp.* v. *Gittlin*, 360 F. 2d 692, 696–97 (2 Cir. 1966). Leaving aside the possible mootness of Mrs. Toro's individual case,* if there is a valid Civil Rights Act class still subject to garnishment, then the interference with existing creditors' suits probably would be substantial.

Furthermore, despite all the controversy over this point in the context of criminal cases, see *McLucas* v. *Palmer*, 427 F.2d 239 (2 Cir. 1970), it is clear that our Circuit has not recognized § 1983 as an express exception to § 2283 in authorizing stays of state court civil proceedings. *Studebaker Corp.* v. *Gittlin*, *supra*, at 696–97; see also *Stevens* v. *Frick*, 372 F.2d 378 (2 Cir. 1967). Even if the Supreme Court should resolve the controversy by holding that an exception exists under certain circumstances involving criminal prosecutions,* such exception is not likely to apply to stays of commonplace civil proceedings already under way.

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* Note 1, *supra*.

* See arguments before the Supreme Court on April 29, 1970, as reported at 38 U.S.L.W. 3429–30 (U.S. May 5, 1970) in *Younger* v. *Harris*, *prob. juris. noted*, 398 U.S. 1013 (Jan. 13, 1969) (No. 163, 1968 Oct. Term; renumbered No. 4, 1969 Oct. Term,) *ass. for rehearing*, 399 U.S. 922 (June

Boone v. *Wyman*, 295 F.Supp 1143 (S.D.N.Y. 1969), *aff'd*, 412 F.2d 857 (2 Cir. 1969), *cert. denied*, 396 U.S. 1024 (1970), does not appear to be applicable here. *Boone* held that the *de novo* judicial remedy provided by the state made the state procedures entirely adequate so that the federal constitutional due process claim became superfluous and unnecessary; but in the present case, there is no question of the substantiality of the constitutional claim. See *Sniadach* v. *Family Finance Corporation*, 395 U.S. 337 (1969). Instead, the question here is whether there is a plaintiff or a class before this Court as to whom the issue is not either purely monetary, moot, or already on the way to adjudication in an adequate state forum. Upon the record before us, this question must be answered in the negative.

The foregoing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed. R. Civ. P.

ORDER

ORDERED that judgments be entered for defendants dismissing the complaints, but without costs.

Dated at New Haven, Connecticut, this 22nd day of October, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.
WILLIAM H. TIMBERS,
United States District Judge.
ROBERT C. ZAMPANO,
United States District Judge.

29, 1970) (renumbered No. 2, 1970 Oct. Term); *Samuels* v. *Mackell*, *prob. juris. noted*, 393 U.S. 975 (Dec. 9, 1968) (No. 580, 1968 Oct. Term; renumbered No. 11, 1969 Oct. Term), *ass. for rehearing*, 399 U.S. 922 (June 29, 1970) (renumbered No. 7, 1970 Oct. Term); *Fernandez* v. *Mackell*, *prob. juris. noted*, 393 U.S. 975 (Dec. 9, 1968) (No. 844, 1968 Oct. Term; renumbered No. 20, 1969 Oct. Term), *ass. for rehearing*, 399 U.S. 922 (June 29, 1970) (renumbered No. 9, 1970 Oct. Term).

CIVIL DOCKET

In the United States District Court

13738

3-JUDGE COURT

Hon. ROBERT P. ANDERSON, U.S.C.J.
Hon. WILLIAM H. TIMBERS, U.S.D.J.
Hon. ROBERT C. ZAMPANO, U.S.D.J.

Jury demand date:

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK

Attorneys for plaintiff: *Allen Sims*, 169 Church Street, New Haven, Conn. 06510; (1) *William H. Clendenen, Jr.* and (2) *Kenneth R. Kreiling*, 185 Church Street, New Haven, Conn. 06510; *David M. Lesser*, 185 Church Street, New Haven, Conn. 06510; *Blair C. Shick*, National Consumer Law Center-Amicus, Boston College Law School, 35 Commonwealth Avenue, Brighton, Mass. 02135; *Norman K. Janes* (Maurice Dancosse—Bruce N. Bernwald /Intervenor), Box D, Willimantic, Conn.

Attorneys for defendant: *Robert K. Killian*, Attorney General (For: Amicus Curiae); *C. Michael Budlong*, Asst. Attorney General, 30 Trinity Street, Hartford, Conn. 06115 (For: Chas. H. Barrett); *Robert S. Evans*, 900 Chapel St., New Haven, Conn. (FOR: HAMDEN NAT'L BANK); *Jerome A. Lacoobelle*, pro se, 138 Orange St., New Haven, Conn.; *Robert K. Killian*, Attorney General, *Daniel R. Schaefer* & *Raymond J. Cannon*, Ass't Attorney Gen'ls, 30 Trinity Street, Hartford, Conn. 06115 (For: Chas. H. Barrett, Ind. and) *Gerald W. Brownstein*, 900 Chapel Street, New Haven, Conn. (P.O. Drawer 1406) (as Amicus Curiae for Commercial Law Lea-

gue); *Eugene A. Camposano*, pro se, 553 Main St., East Haven, Conn.

Basis of Action: Action claiming deprivation of rights under the U.S. Constitution; and seeking a declaratory judgment and an injunction against the enforcing and executing by defendants of Sections 52–279, 52–280, 52–329 & 52–304 of the Conn. General Statutes; Also seeks a 3-Judge Court.

Date	Proceedings
Mar. 4, 1970	Motion for Pern ission to Proceed in Forma Pauperis, filed Order entered granting same. Zampano, J.
Mar. 4, 1970	Complaint filed.
Mar. 4, 1970	Request for a three-judge court pursuant to Title 28, U.S.C. Sections 2281 and 2284, filed.
Mar. 4, 1970	Brief in Support of Plaintiff's Application for Three-Judge filed.
Mar. 4, 1970	Summons issued and together with copies of same and of Motion, Order, Complaint and Brief, handed to the Marshal for service.
Mar. 11, 1970	Marshal's Return Showing Service, filed.—Summons & Complaint.
Mar. 11, 1970	Designation of Judges, entered. The following judges are designated to hear and determine this cause: Hon. Robert P. Anderson, U.S.C.J.; Hon. William H. Timbers, U.S.D.J.; and Hon. Robert C. Zampano, U.S.D.J. Lu n-bard, Chief Judge, U.S. Court of Appeals. M–3/11/70 Copies mailed to three judges; copies handed to plaintiffs attorneys.
Mar. 13, 1970	Copies of file mailed to three judges.
Mar. 18, 1970	Plaintiff's Memorandum of Law, filed.
Mar. 18, 1970	Affidavit of Norma Toro, filed.
Mar. 18, 1970	Affidavit of Francis J. Carling, filed.
Mar. 19, 1970	Hearing on the Merits. Motion of Attorney General of the State of Connecticut to appear as Amicus Curiae, filed. Motion granted. Appearance of C. Michael Budlong, Office of the Attorney General, for State of Conn., filed. Oral argument by Plaintiff 10:15–10:35. Court finds notice has been given to defendants in this case. This hearing is continued to 10:00 A.M. on March 25, 1970 before Judge Zampano, third floor courtroom. Answering briefs by the State of Conn. or any other defendant shall be filed in the Clerk's office on or before 5:00 P.M. on 4/8/70. Plaintiff given to 5:00 P.M. on April 14, 1970 to file reply brief. Court adjourned at 11:02. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M–3/19/70 Copies of documents filed and Order granting motion handed to 3 Judges. Copies of Motion and Order mailed to all counsel.

Date	Proceedings
Mar. 19, 1970	Appearance of Robert S. Evans, entered for Defendant, Hamden National Bank. Copies mailed to 3 Judges.
Mar. 24, 1970	Per oral request of Atty. Clendenen, FJC today called the defendants listed on the court calendar for the hearing to be held on March 25, 1970, before Judge Zampano, to notify them of this hearing date inasmuch as the mail strike was on and the calendars may not have reached the parties.
Mar. 25, 1970	Appearance of C. Michael Budlong, Assistant Attorney General for Charles M. Barrett, Sheriff, filed.
Mar. 25, 1970	Answer of Hamden National Bank, filed.
Mar. 25, 1970	Motion to Dismiss, filed by Defendant Barrett.
Mar. 25, 1970	After a chamber conference, Judge Zampano stated for the record that counsel have agreed to meet with him again 4/10/70 at 2 P.M. At that time all answers, motions, etc. must be filed as well as brief on all matters counsel desire to file briefs (except a brief on the merits). Any defendant who has not pled by 4/10 will be in default. Mr. Lacobelle ordered to advise the Court then whether he has or will release the attachment. Zampano, J. M–3/30/70
Apr. 10, 1970	Court Reporter's transcript of proceedings held on March 19, 1970, Hearing on the Merits, filed. (Russel, R.)
Apr. 10, 1970	Appearance of Jerome A. Lacobelle, Esq., entered for himself.
Apr. 10, 1970	Answer of defendant Jerome A. Lacobelle, filed.
Apr. 10, 1970	Appearance of Eugene A. Camposano entered for himself.
Apr. 10, 1970	Answer of the defendant Eugene A. Camposano, filed.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of March 19, 1970, filed. Russell, R.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of March 25, 1970, filed. Russell, R.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of April 10, 1970, filed. Gale, R.
Apr. 20, 1970	Appearance of Robert K. Killian and Daniel R. Schaefer, entered for Defendant, Charles H. Barrett, Deputy Sheriff of New Haven County, individually, and as a representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut.
Apr. 20, 1970	Supplementary Brief, filed by Defendant.
Apr. 20, 1970	Answer, filed by Defendant.
Apr. 21, 1970	Court Reporter's transcript of proceedings held on April 10, 1970, filed. (Russell, R.)
Apr. 30, 1970	Plaintiffs' Brief in Opposition to Defendant's Motion to Dismiss, filed. Copies mailed to 3 Judges.
May 4, 1970	Brief of Amicus Curiae on Behalf of Plaintiffs, filed National Consumer Law Center. Copies sent to Three Judges.
May 7, 1970	Supplementary Brief In Opposition To Defendant's Motion to Dismiss, filed by Plaintiff. Copies mailed to three Judges.

Date	Proceedings
May 12, 1970	Appearance of Gerald W. Brownstein, entered for The Commercial Law League of America, Amicus Curiae. Copies to 3 Judges.
May 12, 1970	Brief of Amicus Curiae on Behalf of Defendants, filed. Copies to 3 Judges.
May 11, 1970	Order entered granting Attorney Gerald W. Brownstein to enter as Amicus Curiae on behalf of The Commercial Law League of America. Zampano, J. M–5/11/70. Copies mailed to all counsel and to 3 Judges.
May 12, 1970	Petition to Appear Amicus Curiae on behalf of The National Consumer La Center, filed. Copies to 3 Judges.
May 12, 1970	Appearance of Robert K. Killian, Atty. Gen., and Raymond J. Cannon, Asst. Atty. Gen., entered for defendant Chas. H. Barrett, Deputy Sheriff of New Haven County, Individually, and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut. Copies to 3 Judges.
May 12, 1970	Brief of Defendant, Charles H. Barrett, Deputy Sheriff of New Haven County, Individually and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut, filed. Copies to 3 Judges.
May 15, 1970	Reply Brief of Defendant Charles H. Barrett, Deputy Sheriff of New Haven County, Individually, and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut, filed. Copies to 3 Judges.
May 13, 1970	Continued Hearing on Merits. Mr. Schaefer argues 10:35–11:10; Messrs. Sims & Clendenen argue 11:10–11:20; Rebuttal 11:30–11:55. Plaintiffs' Exhibit A marked for Identification. Decision Reserved. Defendants may file reply or rebuttal briefs by 5/20/70 at 5 P.M. Responding brief by Plaintiffs by 1 week later. Court adjourned at 12:00 Noon. Anderson, C.J.; Timbers, D.J.; Zampano, D.J. M–5/14/70.
May 14, 1970	Appearance of Kenneth R. Kreiling, entered for plaintiff. Copies to 3 Judges.
May 20, 1970	Supplemental Argument, filed by Defendant Charles H. Barrett. Copies to 3 Judges.
May 27, 1970	Plaintiff's Memorandum—Jurisdiction, filed. Copies to 3 Judges.
Aug. 11, 1970	Motion of Maurice Dancosse to Intervene, filed.
Aug. 11, 1970	Motion of Maurice Dancosse for Permission to Proceed in Forma Pauperis and Affidavit, filed.
Aug. 14, 1970	Notice of Motion re Motion of Maurice Dancosse to Intervene, filed. Copies to 3 Judges.
Aug. 14, 1970	Copies of Above Motions filed 8/11/70 mailed to 3 Judges.

Date	Proceedings
Aug. 20, 1970	Endorsement entered on Motion of Intervening Plaintiff, Maurice Dancosse, To Intervene, as follows: "This case has been fully submitted to the Court and is now under advisement. The motion to intervene is, therefore, denied. (8/19/70) Anderson, R. P., U.S.C.J. M-8/20/70. Copies mailed to 3 Judges; copies mailed to all counsel of record.
Aug. 25, 1970	Court Reporter's Notes of Proceedings of May 13, 1970, filed. Russell, R.
Aug. 31, 1970	Court Reporter's Transcript of Proceedings of March 25, 1970, filed. Sanders, Gale & Russell.
Oct. 22, 1970	Opinion entered. Ordered that judgment be entered for defendants dismissing the complaint, but without costs. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.
Oct. 22, 1970	Judgment entered. Ordered that judgment be entered in favor of defendants, denying all relief sought by plaintiffs and dismissing the complaint; and that no costs be taxed against any party to this action. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed Attys Clendenen and Pulaski; copies mailed to all other counsel.
Nov. 19, 1970	Notice of Appeal to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to all counsel and to 3 Judges.
Nov. 20, 1970	Notice to Appeal to the Supreme Court of the United States, filed by Applicant for Intervention, Maurice Dancosse. Copies mailed all counsel and the three Judges.
Nov. 20, 1970	Motion for Leave to Appeal to the Circuit Court for the Second Circuit, and Affidavit of Maurice Dancosse, filed by Applicant for Intervention, Maurice Dancosse. Copies to 3 Judges.
Dec. 3, 1970	Ruling on Motion of Maurice Dancosse for leave to appeal in forma pauperis, entered. "The application of Dancosse to proceed in forma pauperis is denied." Anderson, C. J.; Timbers, D. J.; and Zampano, D. J. M-12/3/70. Copies mailed counsel and 3 Judges.

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERRIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK, DEFENDANTS

COMPLAINT (Filed March 4, 1970)

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. Section 1983 to redress the deprivation of rights, privileges and immunities secured to the plaintiffs by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C., Section 1343.

3. This is a proper case for a determination by a three-judge district court pursuant to Title 28 U.S.C. Sections 2281 and 2284, in that it seeks an injunction to restrain the defendants, some of whom are state officials performing state functions, from applying, enforcing and executing Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes insofar as these statutes authorize and allow pre-judgment garnishment and attachment of a checking account without prior notice, judicial hearing, and the opportunity to be heard in violation of the Due Process Clause and permit pre-judgment garnishment and attachment in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

4. This action seeks an injunction and declaratory judgment (Title 28 U.S.C. §§ 2201 and 2202) restraining the enforcement of and declaring unconstitutional Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes on their face and as applied and used by the defendants on the grounds

that said statutes and actions taken pursuant thereto deprives the plaintiff of equal protection of the law and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

5. The named Plaintiff seeks, pursuant to Rule 23, Federal Rules of Civil Procedure, to represent those persons similarly situated, who constitute a class encompassing those residents of the State of Connecticut who have been and will be in the future, subjected to and are threatened with pre-judgment attachment and garnishment as authorized by Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes. The members of the class on behalf of whom this action is brought are similarly affected by the statutes complained of herein and are so numerous as to make it impracticable to bring each one of them individually before this Court. There are common questions of law and fact, and the claims of the named Plaintiff are typical of the claims of the class she represents, and the named Plaintiff will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class.

6. The named Defendant, Charles H. Barrett, pursuant to Rule 23, Federal Rules of Civil Procedure, represents the sheriffs, deputy sheriffs and constables in the State of Connecticut who are authorized to serve writs of attachment and garnishment. The members of this class are so numerous as to make it impracticable to bring each one of them individually before this Court, but they have common interests in the questions of law and fact to be litigated herein. The defenses of the named Defendant, Charles H. Barrett, are typical of the class he represents, and litigation by him will fairly and adequately protect the interests of the members of the class. The statutes complained of herein are generally and equally applicable to every member of the class, making relief as against all appropriate.

7. The Plaintiff, Norma Toro, is a citizen and resident of the United States and of the State of Connecticut.

8. The named Plaintiff works for Gant Shirtmakers and earns $85.00 per week. These earnings must support the Plaintiff and her son.

9. In October of 1969 the named Plaintiff opened a checking account with The Hamden National Bank in which she regu-

larly deposited a portion of her salary. Said account was used to meet necessary family expenses.

10. Defendant, Eugene A. Camposano, is the plaintiff in a civil action against Norma Toro, the named Plaintiff herein, which is pending in the Sixth Circuit Court of the State of Connecticut, and which was commenced by a writ of attachment, a copy of which is attached hereto as Exhibit A, and is hereby incorporated by reference.

11. Defendant, Jerome A. Lacobelle is an attorney licensed to practice law in the State of Connecticut and represents Eugene A. Camposano in the aforementioned civil action and who, as attorney and agent for Eugene A. Camposano and acting in his capacity as Commissioner of the Superior Court of the State of Connecticut, signed and issued a writ of attachment, pursuant to Section 52–329 of the Connecticut General Statutes, against the named Plaintiff, Norma Toro.

12. Defendant, Charles H. Barrett, is a deputy sheriff for the County of New Haven, State of Connecticut. Defendant Barrett, pursuant to the command contained in the writ of attachment, attached the named Plaintiff's checking account by serving the above-stated writ of attachment on The Hamden National Bank, the holder of the named Plaintiff's checking account.

13. Defendant, The Hamden National Bank, acting through its agent, Donald Calcagnini, President, is a corporation chartered under the laws of the United States of America and having its place of business in Hamden, Connecticut. Said Defendant holds funds of the named Plaintiff which the latter deposited therein. Said Defendant accepted the aforementioned writ of attachment which completed the attachment of the named Plaintiff's funds.

14. On January 27, 1970, the Defendant, Jerome A. Lacobelle, acting under color of the authority conferred upon him by the laws of the State of Connecticut as a Commissioner of the Superior Court of the State of Connecticut, and pursuant to Sections 52–329 and 52–279 of the Connecticut General Statutes, issued a writ of attachment pursuant to Section 52–329 of the Connecticut General Statutes, commanding the Sheriff of the County of New Haven to attach the property of Plaintiff to the value of $700.00. The Defendant, Jerome A. Lacobelle, was acting and continues to act as an attorney representing the

interests of Eugene A. Camposano in the aforementioned civil action pursuant to which this writ of attachment was issued. (See Exhibit A)

15. On January 30, 1970, the Defendant, Charles H. Barrett, attached the checking account of the named Plaintiff at The Hamden National Bank containing $103.99 and served on the named Plaintiff a copy of the aforementioned writ, summons and complaint.

16. On January 30, 1970, Defendant, The Hamden National Bank, charged the named Plaintiff's account $10.00 to cover their "legal expenses in this matter." (See Exhibit B which is attached hereto and is hereby incorporated by reference.)

17. As a result of the attachment made on the named Plaintiff's checking account, she has suffered great hardship, since she is unable to pay creditors to whose order she has drawn checks which her bank will not honor because of said attachment, her credit stands to be utterly destroyed and she is subject to the threat of criminal prosecutions for drawing checks which her bank will not honor.

18. The named Plaintiff was given no notice prior to the attachment, nor was she given any opportunity to be heard prior to the attachment,

19. Pre-judgment attachment and garnishment are authorized by Sections 52–279, 52–280, 52–304, and 52–329 of the Connecticut General Statutes. These statues permit attachment and garnishment at the commencement of a suit containing a demand for money upon the order of an attorney representing a self-proclaimed creditor or other plaintiff, against the estate or goods of any person from whom the self-proclaimed creditor or other plaintiff claims money.

20. The statutes permit attachments or garnishments to be made whether a defendant in an action pursuant to which an attachment is made is a resident or a non-resident of the state, without regard to the ease with which personal jurisdiction over a defendant could be obtained and without regard to the existence or non-existence of any necessity to protect a plaintiff by obtaining security for any judgment which may be rendered against a defendant.

21. The procedure authorized by the aforementioned statutes provides for no prior notice to the persons whose goods, estate, or debts are to be attached or garnished. There is no provision for a prior determination by an independent third

party that a plaintiff's claim has any merit whatsoever or that the remedies of attachment and garnishment are in any way necessary to protect the interests of the plaintiff. A plaintiff in an action pursuant to which an attachment or garnishment is made is not required to verify the allegations of the complaint or to give oath or affirmation that the allegations are true.

22. The procedure authorized by the aforementioned statutes contains no provision permitting a defendant to have an attachment or garnishment released promptly on the ground that the plaintiff's claim is spurious or without merit, nor is there any statutory or common law procedure by which a defendant is insured the right to a prompt and summary hearing on the merits.

23. The aforementioned statutes on their face and as applied by the Defendants herein are unconstitutional in that the procedure established by their authority did cause and may in the future cause the named Plaintiff herein to be deprived of her liberty and property without due process of law, and to be denied the equal protection of the laws in that the cited Connecticut statutes invidiously discriminate against debtors and the poor all in violation of the Fourteenth Amendment to the United States Constitution.

24. The Plaintiffs have no adequate remedy at law, and the Defendants will continue to cause the Plaintiffs irreparable injury unless enjoined by this Court.

WHEREFORE, the Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action and convene a three-judge court pursuant to Title 28 U.S.C. Sections 2281 and 2284.

2. Enter a final judgment pursant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Connecticut Statutes cited herein deprive the Plaintiffs of rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and that the statutes are unconstitutional on their face and as applied by the Defendants herein.

3. Enter a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52-279, 52-280, 52-304, and 52-329 of the Connecticut General Statutes.

4. Enter a permanent injunction ordering the Defendants, their successors, agents, and employees to release the attachment and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs, without cost, any personal property which they have attached.

5. Order such other and further relief as is deemed just and proper.

The PLAINTIFFS.
By Their Attorneys,
ALLEN SIMS.
WILLIAM H. CLENDENEN, Jr.
DAVID M. LESSER.

VERIFICATION

NEW HAVEN, *February 27, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.

I, Norma Toro, being first duly sworn upon oath according to law, hereby depose and say that I have read the foregoing Complaint, know the contents thereof, and that the statements contained herein are true and correct, to the best of my knowledge and belief.

Norma Toro
NORMA TORO.

[Jurat Deleted]

EXHIBIT A

To the Sheriff of the County of New Haven, his Deputy, or City Sheriff or Constable of the town of East Haven, in said County,—Greeting:

By authority of the State of Connecticut, you are hereby commanded to attach, to the value of Seven Hundred ($700.00) Dollars, the goods or estate of Norma Toro, of 625 Main Street, in the Town of East Haven, County of New Haven, State of Connecticut, and her summon to appear before the Circuit Superior Court of Connecticut to be held at 8th Circuit, 377 Main Street, West Haven in and for the County of New Haven, on the Fourth Tuesday of February, 1970, at 10:00 o'clock in the forenoon, then and there to answer unto Eugene A. Camposano, of 553 Main Street, in the Town of East Haven, County of New Haven, State of Connecticut in a civil action, wherein the plaintiff(s) complains and says:

First Count:

1. On or about October 6, 1969, the defendant leased in writing the first floor premises of the plaintiff at 625 Main Street, East Haven, Connecticut, for a one year period at the monthly rental of $150.00 per month.

2. The defendant has not paid the rental due for January, 1970 and though requested, fails and refuses to do so.

3. Further, the defendant does not intend to comply with the remaining terms and conditions of her lease.

Second Count:

1. On and before ——— the plaintiff(s) lent $——— to the defendant(s)

2. And paid, laid out and expended said sum for the defendant

3. And sold and delivered goods, wares and merchandise of the price and value of said sum to the defendant

4. And bargained and sold goods, wares and merchandise of the price and value of said sum to the defendant

5. And performed work and rendered professional services of the price and value of said sum for the defendant

6. And furnished materials of the price and value of said sum to the defendant

7. And furnished board and lodging, washing, fuel and other articles of the price and value of said sum to the defendant

8. And used certain vehicles and equipment of the plaintiff , by Plaintiff's permission, which use was reasonably worth said sum;

9. And on said day the defendant had and received said sum to and for the use of the plaintiff

10. And performed professional services of the price and value of said sum for the defendant

11. And used and occupied certain lands, tenements and apartments of the plaintiff by plaintiff's permission, which use and occupation were reasonably worth said sum

12. And said sum was found to be due to the plaintiff from the defendant on an account then and there stated between them

13. Yet though said sums are justly due to the plaintiff from the defendant the defendant ha never paid the same.

Written demand was made upon the defendant for payment of the foregoing claim not more than thirty days nor less than three days prior to the date of this Writ.

Notice is hereby given to each defendant that the plaintiff(s) seek(s) satisfaction of any judgment rendered in favor of plaintiff(s) in this action from any debt accruing to each defendant by reason of his personal services.

The plaintiff claim :

1: $700.00 damages.

2. An order on the defendant for reasonable weekly payments out of sums earned or to be earned by the defendant for services rendered or to be rendered by defendant to said ——— ——— in accordance with the statute made and provided.

And you are hereby further commanded to leave a true and attested copy of this writ and of the accompanying complaint, at least twelve six days before the session of the Court to which it is made returnable, with The Hamden National Bank, 2992 Dixwell Avenue, Hamden, Connecticut. (Account #02200049) a legal corporation organized and existing under the laws of the State of Connecticut, and located and having an office and principal place of business in said City of Hamden and with or at its usual place of abode as it is the Agent(s), Trustee(s), and Debtor(s) of said defendant and has concealed in its hands the goods, effects and estate of said defendant and indebted to the defendant .

And you are further commanded to summon said garnishee to appear before said Court at the date and place first mentioned, then and there to disclose on oath whether said garnishee ha concealed in his its their hands the goods, effects or estate of said defendant , or is indebted to the defendant .

Anthony LoRicco of New Haven is recognized in $100.00 to prosecute, &c.

I, the subscribing authority, hereby certify that I have personal knowledge as to the financial responsibility of the plaintiff and deem the plaintiff, sufficient to pay the

costs in this action. Of this writ, with your doings thereon, make due service and return.

Dated at New Haven, Conn. this 27th day of January, 1970.

JEROME A. LACOBELLE, Commissioner of the Superior Court hereby enter appearance for the plaintiff in the above entitled action.

Town of HAMDEN, *January 30, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.:

Then and there by virtue hereof, of the original writ, summons and complaint I attached as the property of the within named defendant(s)
all goods, effects, money and debts due to or belonging to the within named defendant and in the hands or possession of the within named garnishee by leaving with at the usual place of abode of
a true and attested copy hereof, at least twelve six days before the session of the Court to which this writ is returnable, said garnishee being herein named and described as the Agent , Trustee , and Debtor of said defendant , and said garnishee having been dully inquired of by me, disclosed that it he was they were indebted to said defendant at the date hereof in the sum of $....., and I made diligent search throughout my precincts for other goods and estate of said defendant whereof to attach but could find none.

And afterwards on the ..... day of ..... 19— I left with, at the usual place of abode of the within named defendant(s) true and attested copy (copies) of the within writ, summons and complaint with my said doings thereon endorsed.

The within and foregoing is a true copy (copies) of the original writ, summons and complaint with my doings thereon endorsed.

FEES

—— Miles Travel.... $——
—— Copies ..... ——
—— Service ..... ——
—— Endorsement ... ——
Securing Property.... ——
——
$——

Attest:
CHARLES H. BARRETT,
Deputy Sheriff, County of New Haven.

The defendant(s) voluntarily agrees to pay the costs of this action whether or not the writ is returned to court, and further agrees that, at the option of the plaintiff(s), the writ may be returned to court at any time after the return day.

.....

.....

Docket No.

COURT

at

Plaintiff(s)

against

Defendant(s)

WRIT, SUMMONS AND COMPLAINT

Common Counts and Garnishee Process

Attorney(s) for Plaintiff(s)

Office and Post Office Address

EXHIBIT B

THE HAMDEN NATIONAL BANK,
2992 DIXWELL AVENUE,
HAMDEN, CONNECTICUT 06518,
AREA CODE 203 288-7411

January 30, 1970.

MRS. NORMA TORO
625 Main Street
East Haven, Connecticut

Re: Norma Toro
vs.
Eugene Camposano

DEAR MRS. TORO: In connection with the above matter we have been served with a Writ of Attachment in the amount of $700, and accordingly we are holding the balance in your checking account which is $103.99.

We have charged your account $10.00 as per the enclosed debit to cover our legal expenses in this matter.

Further enclosed is a copy of the Attachment for your use. If you have any objections or legal reasons why this Attachment is invalid, please contact the office of Jerome Lacobelle.

Very truly yours,

E. K. RYDER,
Assistant Cashier.

EKR/vb
Enclosures

[Notation Deleted]

In the United States District Court for the
District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK, DEFENDANTS

MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS

(Filed March 4, 1970)

Comes now the Plaintiff, Norma Toro, by counsel, Allen Sims, and moves this court, pursuant to Title 28 U.S.C.A., 1915, for permission to proceed in forma pauperis in filing the attached complaint for a declaratory judgment and injunctive relief under the Civil Rights Act, Title 42 U.S.C., Section 1983, and Title 28 U.S.C., Section 1343. An Affidavit in support of this motion is attached hereto.

NORMA TORO
The Plaintiff.
By ALLEN SIMS,
Her Attorney.

ORDER

The foregoing motion having been submitted to the Court and good cause appearing therefor, it is hereby

ORDERED, that plaintiff be permitted to proceed in forma pauperis in this Court.

Dated this 3d day of March 1970.

ROBERT C. ZAMPANO,
Judge.

AFFIDAVIT

NEW HAVEN, *February 27, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss:

I, Norma Toro, being first duly sworn according to law, state in support of my attached motion for permission to proceed *in forma pauperis:*

1. I am a plaintiff in this action.

2. My principal source of income is my earnings of eighty-five dollars ($85.00) per week, and with these earnings I must fully support myself and my son. I also receive aid from the State Welfare Department.

3. I am in debt, and am liable to eviction as a result of the attachment of my small account.

4. I am unable, because of my poverty, to pay the costs of this action.

5. I am unable to give security.

6. I believe in good faith that I am entitled to the relief I am seeking.

7. The nature of the action is as follows:

The Affiant seeks a declaratory judgment that Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes on their face and as applied in this case contravene her rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. The Affiant furthermore seeks a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes, and a permanent injunction ordering the Defendants, their successors, agents and employers

to release any pre-judgment attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs without cost any personal property which they have attached.

Norma Toro
NORMA TORO.

Subscribed and sworn to before me on this 27th day of February, 1970.
ALLEN SIMS

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

AFFIDAVIT

(Filed March 18, 1970)

NEW HAVEN, *March 16, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.

NORMA TORO, being duly sworn, deposes and says that:

1. She is 31 years old, a citizen of the United States and a resident of the Town of East Haven, County of New Haven, State of Connecticut.

2. She is the mother of Pedro Luna who is 13 years old, a minor citizen of the United States who is a resident of the Town of East Haven, County of New Haven.

3. She is the head of her household having sole responsibility for the support of her family.

4. She was divorced two years ago and her ex-husband does not contribute to the support of Mrs. Toro and her son.

5. Although she has been employed since she came to Connecticut approximately two years ago, she has had to rely on some asisstance from the State Welfare Department in order to sustain her family.

6. She is presently employed by Gant Shirtmakers of New Haven, Connecticut, for whom she has worked for about six months.

7. Gant has been training her for a supervisory position in their stitching department.

8. She has performed well in this position and now supervises approximately 40 employees in the stitching department.

9. Because her employment has worked out so well, she believes that it should not be long before she is able to be completely self-sustaining and no longer be dependent upon aid from State Welfare.

10. On or about October 6, 1969, Mrs. Toro entered into a purported one year lease agreement with Eugene A. Camposano.

11. As a result of numerous breaches of the lease agreement by Defendant Camposano, his agents, partners, or employees, and as a result of numerous housing code violations, Mrs. Toro was forced to find another place to live at the end of January, 1970.

12. Mrs. Toro stopped payment on her January rent payment and allowed her landlord to keep her security deposit (which was in the amount of one month's rent) for her occupancy of the premises during January, 1970.

13. Defendant Eugene A. Camposano instituted a civil action in the Circuit Court of Connecticut by garnishee process and garnished her checking account at The Hamden National Bank on January 30, 1970.

14. Defendant Camposano alleged in his complaint nonpayment of rent and breach of lease and claimed $700.00 damages.

15. Mrs. Toro has a checking account with The Hamden National Bank.

16. She used this account to deposit her weekly wages and pay her necessary living expenses.

17. At the time of the garnishment, Mrs. Toro had $103.99 in her account.

18. As a result of the garnishment of Mrs. Toro's account, all her outstanding checks were returned to the payees unpaid.

19. Said checks were payable to the American Finance Company, W. T. Grants (two checks) and Relax-a-Cisor.

20. When these checks were returned, the payees demanded immediate cash payments from Mrs. Toro.

21. She does not have sufficient funds to pay these bills with cash.

22. Two of the checks that were returned unpaid were to creditors who hold a security interest in property on which Mrs. Toro is making payments.

23. The garnishment of her checking account has put her in default of her obligations to these creditors and they have a right to immediate possession of this property.

24. The default created by the non-payment of her check to American Finance not only gives that creditor the right to repossess her automobile, but also the option of calling her note and demanding the full amount owed for immediate payment.

25. On January 30, 1970, The Hamden National Bank wrote Mrs. Toro a letter informing her of the garnishment and of a $10.00 charge the bank assessed her as "legal expenses."

26. The summary garnishment has caused Mrs. Toro great financial upset and she stands to have her credit utterly destroyed by the actions of the Defendants.

27. Mrs. Toro has valid defenses to the civil action instituted by Defendant Camposano.

28. In response to a motion made by Defendant Camposano in the pending state civil action, Mrs. Toro filed a Disclosure of Defense which describes her defenses in said action and is attached hereto and hereby incorporated by reference.

Norma Toro
NORMA TORO.

[Jurat Deleted]

Eighth Circuit Court at West Haven

No. CV8–702–9353

EUGENE A. CAMPOSANO

v.

NORMA TORO

DISCLOSURE OF DEFENSE

(March 16, 1970)

The attorney for the defendant believes that bona fide defenses exist to the plaintiff's actions and that such defenses will be made.

The nature of the defenses are:

That plaintiff maintained the premises at 625 Main Street, East Haven, Connecticut in an untenantable condition in breach of the lease agreement between the plaintiff and defendant and therefore no lease existed between the parties and no rent was or is due and owing; that as a result of many material and continuing breaches of the lease by the plaintiff no lease existed between the parties and no rent was or is due and owing; that no lease existed between the parties by reason of a failure of consideration on the part of the plaintiff, and therefore no rent was or is due and owing; that the purported lease between the parties contained unconscionable provisions which denied the defendant the quiet possession of her premises and therefore any purported lease between the parties is unenforceable and therefore no rent was or is due and owing; that the amount of monthly rent claimed by the plaintiff, in light of the condition of the premises and purported terms under which they were let was unconscionable and therefore unenforceable and therefore no rent was or is due and owing; that the plaintiff maintained said premises in such condition that they violated the Housing Code of the City of West Haven and any purported lease for said premises was void and of no effect as against public policy; and that the parties to the lease agreement agreed to a termination of said lease in the month of January, 1970, effective at the end of January, 1970.

In addition the attorney for the defendant believes that the defendant has a set off against the plaintiff's claim which will be raised involving the security deposit which the defendant paid over to the plaintiff.

Furthermore the attorney for the defendant believes the defendant to have valid counterclaims against the plaintiff for work performed and rendered to the plaintiff and for excess rents paid over to the plaintiff.

THE DEFENDANT.

By

ALLEN SIMS

Her Attorney.

CERTIFICATION

[Deleted]

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO ET AL., DEFENDANTS

AFFIDAVIT

(Filed March 18, 1970)

NEW HAVEN, *March 16, 1970.*

STATE OF CONNECTICUT
County of New Haven, ss:

In an effort to secure the posting of a surety bond pursuant to § 52–304 of the Connecticut General Statutes, to release the pre-judgment garnishment of $103.99 in the checking account of Mrs. Norma Toro, Francis J. Carling telephoned the bonding and insurance companies in New Haven, Connecticut. The responses received are described below.

1. In a telephone conversation on March 13, 1970 with an agent of the M. G. Wilson Agency, 129 Church Street, New Haven, I was informed that this company does not deal in such bonds because there "is no market for them," since insurance companies generally will not write them for agents.

2. In a telephone conversation on March 12, 1970 with Mr. Harry Anderson of The Harry N. Anderson Agency, 10 Pine Orchard Road, Branford, I was informed that this company does not write bonds for the release of garnishments.

3. In a telephone conversation on March 12, 1970 with a Miss Bolash, an agent of the Condon Insurance Company, 47 College Street, New Haven, I was informed that this company requires 100% collateralization for a bond for the release of a garnishment.

4. In a telephone conversation on March 12, 1970 with a Mrs. Williams, an agent of The Joseph Golden Insurance Agency, Inc., 95 Crown Street, New Haven, I was informed that this company rarely writes bonds for the release of garnishments since their requirement of 100% collateralization makes such bonds "not sensible" for their customers.

5. In a telephone conversation on March 12, 1970 with Mrs. Kennedy of the Kennedy Agency, 1260 Dixwell Avenue, Hamden, I was informed that this company requires 100% collateralization for bonds for release of garnishment.

6. In a telephone conversation on March 12, 1970 with Mr. James P. Laudicina of The James P. Laudicina Agency, 908 Orange Avenue, West Haven, I was informed that this company requires 100% collateralization of bonds for the release of garnishments, except when the bond is requested by one of their regular customers.

7. In a telephone conversation on March 12, 1970 with an agent of the P. A. Leonardi Company, 900 Chapel Street, New Haven, I was informed that this company requires 100% collateralization of bonds for the release of garnishments. The agent stated that she had consulted Mr. P. A. Leonardi before giving me this information.

8. In a telephone conversation on March 12, 1970 with an agent of the T. H. Fitzsimmons Agency, 205 Church Street, New Haven, I was referred to the company which writes their bonds, The Travelers Insurance Company, 121 Whitney Avenue. In a telephone conversation on the same date with an agent of the latter company, I was informed that 100% collateralization of such a bond would be required.

9. In a telephone conversation on March 12, 1970 with an agent of Mathog and Company, Inc., 419 Whalley Avenue, New Haven, I was informed that this company will only write such bonds for their regular customers.

10. In a telephone conversation on March 12, 1970 with Mr. David North of North's Insurance Agency, Inc., 242 Orange Street, New Haven, I was informed that this company requires 100% collateralization for such bonds when they are requested by individuals, rather than corporations.

11. In a telephone conversation on March 13, 1970 with a Mr. Barnes, an agent of Herman and Rice, Inc., 261 Bradley Street, New Haven. I was informed that this company does not write such bonds, and that to the agent's knowledge the companies that do write them require 100% collateralization of such bonds.

12. In a telephone conversation on March 13, 1970 with an agent of the Podoloff-Zimmerman Insurance Agency, Inc., 95 Crown Street, New Haven, the agent expressed doubt that his

company would write such a bond for an individual who was not one of their regular customers.

13. In a telephone conversation on March 13, 1970 with Mr. Abraham Silverman, of The Abraham Silverman Agency, 265 Church Street, New Haven, I was informed that it was his practice, and to his knowledge the practice in the industry in general, to require 100% collateralization for such bonds.

14. In a telephone conversation on March 13, 1970 with a Mr. Galinas, an agent of Thompson and Peck, Inc., 321 Whitney Avenue, I was informed that this company does not write such bonds at all.

15. In a telephone conversation on March 13, 1970 with an agent of the West Haven Insurance Center, 588 Campbell Avenue, West Haven, I was informed that this company has no experience with writing such bonds, because customers have been unwilling in the past to supply the 100% collateral which this company requires. The agent also stated that he knew of no company in the New Haven area which would write such a bond with less than 100% collateralization.

16. In a telephone conversation on March 12, 1970 with an agent of the William M. Adams Agency, 1210 Dixwell Avenue, Hamden, I was informed that this agency does not write bonds for the release of garnishments.

17. In a telephone conversation on March 13, 1970 with an agent of Marvin H. Yudkin Real Estate and Insurance, 1 Broadway, North Haven, I was informed that this agency does not deal in such bonds, because "there is no insurance company to place them with."

FRANCIS J. CARLING.

[Jurat Deleted]

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

MOTION TO DISMISS

(Filed March 25, 1970)

The defendant CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, individually, and as representative of all the sheriffs, deputy sheriffs and constables of the State of Connecticut hereby moves the Court to dismiss the Complaint for the following reasons:

1. The Complaint fails to state a claim against the defendant Charles H. Barrett, Deputy Sheriff of New Haven County, upon which relief can be granted.

2. The allegations of the Complaint are insufficient in law and in fact to show the jurisdiction of the Court.

CHARLES H. BARRETT,
Deputy Sheriff of New Haven County.
Defendant.

By ROBERT K. KILLIAN,
Attorney General.
C. MICHAEL BUDLONG,
Assistant Attorney General.

CERTIFICATION

[Omitted in Printing]

In the United States District Court for the District of Connecticut

Civil No. 13,738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

The motion of Maurice Dancosse, an applicant for intervention in this case whose application was heretofore denied, for leave to appeal in forma pauperis from said denial to the United States Court of Appeals for the Second Circuit is also denied.

Dancosse first sought to intervene after the Toro case had been heard and fully submitted and while the court had the case under advisement. The matters to be decided in the Toro case did not directly concern or affect the legal interests of Dancosse nor would the decision adjudicate any interests of his. He therefore had no absolute right to intervene.

He did appear to have an interest in some questions of law common both to his case and the Toro case and he may be said to have had a discretionary right to intervene if the court would grant it. 3B Moore, Federal Practice § 24.07(1). This court did not do so, however, because of the extreme lateness of his application and because of the resulting prejudice to the parties in the Lynch and Toro cases, which were considered at the same time, in the consequential delay which the granting of Dancosse's application would have entailed. The order denying his application was therefore not appealable. Even if it were, the affidavit of poverty is not sufficient in a civil action such as this to warrant granting leave to appeal in forma pauperis. Under the circumstances the Court of Appeals has no jurisdiction over the denial of Dancosse's application to intervene; and appeals have been taken from this three-judge court's judgments in the Lynch and Toro cases on October 22, 1970, dismissing the complaints.

It should also be noted that this court also ruled that the Lynch and Toro cases were not valid class actions and Dancosse, therefore, cannot seek intervention as a member of a class.

The application of Dancosse to proceed in forma pauperis is denied.

Dated at New Haven, Connecticut, this 30th day of November, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.

WM. H. TIMBERS,
Chief Judge, United States District Court, Connecticut.

ROBERT C. ZAMPANO,
United States District Judge.

Supreme Court of the United States

October Term, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS,

v.

HOUSEHOLD FINANCE CORPORATION ET AL.

(March 1, 1971)

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Supreme Court of the United States

October Term, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS

v.

HOUSEHOLD FINANCE CORPORATION ET AL.

(March 1, 1971)

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis;*

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

U.S. GOVERNMENT PRINTING OFFICE: 1971